

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 290 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KANAIYALAL KEVALRAM UPADHYAY

Versus

KUMUDINI BHAGWANTRAO PHANSE

Appearance:

MR SURESH M SHAH for Petitioners

MR UA TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 18/04/98

ORAL JUDGEMENT

Against the petitioners, the suit being Regular Civil Suit No. 70 of 1986 to recover the possession of the premises let and amount of rent, was filed by the respondents. They failed not only before the trial court but also in appeal. They have preferred this Civil Revision Application challenging the legality and validity of the judgment and decree passed by the learned Civil Judge (J.D.) at Umergaon and confirmed by the then learned Extra Assistant Judge, Valsad at Navsari.

2. The respondents own the building situated at Umergaon. The southern portion on the ground floor of

that building is let to petitioner No.1. The petitioner No.1 was bound to pay the rent regularly, but he did not make the payment of rent from 1st May, 1982. He was serving as Teacher at Umergaon. In the year 1984 he was transferred from Umergaon to Vatar where he acquired vacant possession of another suitable premises. Since then he is also not using the suit premises for the purpose for which they are let. The respondents found that after he was transferred he also unlawfully sub-let the suit premises to the petitioner No.2 who is his son-in-law. The respondent No.1 is residing at Bombay. She now desires to come back to Umergaon and reside in her house. Hence the respondents filed the suit against the petitioner to recover the possession of the suit premises on four grounds namely, (1) arrears of rent; (2) non-use of the premises; (3) acquisition of the suitable residence by the petitioner No.1 and (4) bonafide requirement, and also to recover the amount of rents, mesne profits etc.

3. On being served with the summons, the petitioners appeared and resisted the suit filing written statement at Ex.12. The learned Civil Judge (J.D.) Umergaon then framed necessary issues at Ex.14 but not specific and clear. The parties then led necessary evidence. Appreciating the evidence before him the learned Civil Judge (J.D.) held that the petitioner no.1 was in arrears of rent for a period of more than six months, the petitioner No.1 was the defaulter as alleged in para-3 of the plaint, and the respondents had established their case of bonafide requirement, but failed to established the case of unlawful sub-letting. The learned Trial Judge then passed the decree of eviction on the grounds of bonafide requirement, acquisition of suitable premises and non-payment of rent. Being aggrieved by the judgment and decree passed by the Civil Court at Umergaon, the petitioners preferred Regular Civil Appeal No.41 of 1990 in the Court of the District Judge, Valsad at Navsari. The appeal was assigned to the then Extra Assistant Judge, Valsad at Navsari for hearing and disposal in accordance with law. The then learned Extra Assistant Judge, hearing the parties, held that the trial Court fell into error in passing the decree of eviction on the grounds of non-payment of rent and bonafide requirement but was right in passing the decree on the ground of non-user available under Section 13 (1) (k) of the Bombay Rent Act. The learned Extra Assistant Judge partly allowed the appeal and confirmed decree of eviction on the ground of non-user. The petitioners have therefore challenged the judgment and decree passed by the lower appellate court preferring this Revision Application.

4. On different grounds, the judgment and decree passed by the lower appellate court are assailed. One of such grounds is that the trial court did not frame the issues specifically. The issues framed were misleading and confusing and it was difficult for the parties to know what were in fact the points in controversy and what evidence they were supposed to lead. It is also contended that no issue qua the non-user of the premises was framed by the trial Court and no finding thereof was also given by the trial Court, but the learned Extra Assistant Judge, surprisingly preferred to pass the decree on the ground of non-user of the suit premises, though no issue was framed and no evidence whatsoever on that issue was led. The petitioners are therefore condemned unheard.

5. In reply, Mr.U.A.Trivedi, learned advocate representing the other side, submits that no error has been committed by either of the courts below. The issues framed are quite just and proper; and are not misleading. Both the parties led the evidence on all the issues and grounds raised without being mis-led or puzzled. Without any reason the petitioners find fault with framing of issues. In fact, there is no justification to interfere with the judgment and decrees passed by both the Courts below.

6. Hearing the parties and perusing the pleadings as well as the evidence led by the parties, I do not think it necessary to dissect the merits of the rival contentions pertaining to different grounds raised in Plaint for getting the decree of eviction. The Revision Application is required to be disposed of on one ground going to the root of the case. I will, therefore, deal with the only ground which is about framing of issues. It is vehemently submitted on behalf of the petitioners that the issues framed were misleading and confusing, with the result it was difficult for the parties to know what type of evidence was required to be led. The petitioner, therefore, did not get the proper opportunity to lead the necessary evidence and especially on the ground of non-user because there was no specific issue framed by the trial Court. So far as acquisition of the suitable residence at Vatar is concerned, the trial Court did not frame the specified issue. It was clumsy and difficult to discern what was really the matter in controversy.

7. Reading Rule 1, Order 14, Civil Procedure Code, it is clear that the issues on material proposition of

fact and law affirmed by one party and denied by the other party are required to be framed because the issues are considered to be the backbone of the suit. The duty of the court is to ascertain at the time of first hearing of the suit the material proposition of fact and law on which the parties are at variance and thereafter frame necessary issues for the decision of the suit. The issues should be specific clear covering all required ingredients so that the parties may know on what points what type of evidence they have to lead. However, if the issue is not framed at all or is not worded properly, but the parties knowing fully well about the case they have to meet with, lead evidence and argue the points, the same would not be fatal. In other words, if both the parties know their respective cases and go on trial, failure to frame the issue, or issue having been unhappily worded would not be fatal, but if the issues framed are misleading or confusing and the parties because of misleading nature of the issues do not lead the evidence, it would amount to deprivation of the opportunity to lead proper and sufficient evidence on the point, and in that case the duty of this court would be to frame the issue clearly and specifically and remand the suit to the trial court for hearing on those issue and finding in accordance with law.

8. Of course the plaint is not happily worded but one will not find it difficult to know that case about non-user is cursorily advanced vide Para 4. Though such case is advanced, the learned trial Judge did not frame specific issue and it seems he rest contented with issue No.2 which I reproduce as under;

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The english version thereof may be couched in the terms viz. whether plff is entitled to possession of the suit property on the basis of deft. being the defaulter as alleged in Para 3 of the plaint ? Vide Para 3 in the plaint, the case about suitable acquisition of premises at Vatar is pleaded. For that also, issue No.2 is framed. The learned trial Judge has framed issue No.2 covering both the grounds but not making it known to the parties that thereby both the grounds, non-user and acquisition of the suitable premises are covered. He on the contrary by using the word 'defaulter' misguided the parties as the same is used qua non-payment of rent, it is not at all the correct and proper word to be used

relating to non-user or suitable acquisition of the premises. He by framing clumsy and misleading issue kept both the parties in dark and puzzled, as a result neither of the parties could lead necessary and sufficient evidence on record. On going through the record, it becomes clear that the parties were puzzled and did not know what type of evidence they were supposed to lead, and in the obscurity they led the evidence which is also insufficient and clumsy and does not strike the head of the nail. The parties, therefore, did not get the proper and reasonable opportunity to submit their case and meet with the requirements and the case advanced by the other side. The learned Judge on these two grounds ought have framed the issues with specific details covering the necessary ingredients. When accordingly the issues are not framed, it would be the duty of this court to frame the issues clearly and specifically covering the ingredients of the applicable provision of law and remand the suit to the trial court for hearing the parties on both the issues and dispose the suit in accordance with law. It may be stated that the learned Assistant Judge overlooked the infirmities in issues and deprivation of opportunity to the parties to lead evidence. He obsessed with casuistry and idolum, he might have roughed in misdirected himself and perfunctorily disposed of the appeal without application of mind. Consequently, the issue No.2 framed by the trial court is hereby deleted, and in its place following two issues shall now be substituted as Issues No. 2-A and 2-B;

2-A Whether plaintiff proves that defendant No.1 has acquired vacant possession of a suitable residence at Vatar ?

2-B Whether plaintiff proves that defendant No.1 does not use without reasonable cause the suit premises for the purpose for which the same were let for a continuous period of six months immediately preceding the date of the suit ?

On these two issues, the parties shall lead the evidence before the trial Court and the suit will then be disposed of in accordance with law.

9. For the aforesaid reason, this Revision Application is allowed. The Judgment & Decree passed by the learned Extra Assistant Judge, Valsad at Navsari in Regular Appeal No.41/90 and the decree passed by the trial court in Regular Civil Suit No.70/86 are hereby set aside. The suit is remanded to the trial court for hearing and disposal in accordance with law on the

abovestated two issues. The learned trial Judge shall give reasonable opportunities to both the parties to lead the evidence and submit and then dispose the same of in accordance with law. The parties to appear before the Court of the Civil Judge (J.D.) at Umergaon on 16th June, 1998 at 11.00 A.M..

10. The Civil Judge (J.D.) at Umergaon is directed to give priority to this suit and dispose the same of latest by 15th September, 1998. Rule accordingly made absolute.
(ccs)

(On Page No.6 in Para 8, there is Gujarati portion)